

**BEFORE THE STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS**

STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS,

Board,

v.

GAMALIEL P. ABAQUETA, M.D.
15856 N. 15th Way
Phoenix, AZ 85022

Licensee.

Case No. HA01017146

SETTLEMENT AGREEMENT

100) b/c
3/29/00
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Gamaliel P. Abaqueta, M.D., ("Licensee") and the State Board of Registration for the Healing Arts (the "Board") enter into this Agreement for the purpose of resolving the question of whether Dr. Abaqueta's license as a physician or surgeon will be subject to discipline. Solely for the purposes of settlement of the pending matter, Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo Supp. 1999.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against

Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including any claims pursuant to §536.087, RSMo 1994, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that

this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement, or any portion thereof, void or unenforceable.

5. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. The parties stipulate that this agreement is entered into in order to resolve the Board's case, no. HA01017146, and is not an admission of liability on the part of Dr. Abaqueta for use in any other proceeding pursuant to *State ex rel. Malan v. Huesemann*, 942 S.W.2d 424 (Mo. App. W.D. 1997).

7. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620, and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

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JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Gamaliel P. Abaqueta, M.D. ("Licensee") is licensed by the Board as a physician and surgeon, License Number MD33949, which license was first issued January 8, 1972. Licensee's certificate of registration is current and active, and was so at all times related herein.

3. Licensee was an anesthesiologist working at the Veterans Affairs Medical Center ("VAMC") in Phoenix, Arizona on or about December 2, 1998.

4. On or about December 2, 1998, patient J.S. had surgery performed on her at the VAMC. Before the surgery began, J.S. was generally anesthetized and examined by the surgeons.

5. Although Licensee was not assigned to deliver anesthesia to patient J.S., he repeatedly palpated her breasts in the presence of operating room personnel.

6. It was unnecessary for Licensee to palpate a patient's breasts when the patient is under general anesthesia.

7. Licensee's conduct was incompetency in the performance of the functions and duties of a physician.

8. On or about March 9, 2000, VAMC terminated Licensee based on his conduct with regard to patient J.S., although Licensee is in the process of appealing that termination.

9. VAMC's discharge of Licensee constitutes final disciplinary action by a licensed hospital.

JOINT PROPOSED CONCLUSIONS OF LAW

1. Cause exists for the Board to take disciplinary action against Licensee's license pursuant to §334.100.2 (4)(g) and (5), RSMo Supp. 1999, which read:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate or registration or authority, permit or license for any one or any combination of the following causes:

* * *

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to the following:

.....

(g) Final disciplinary action by any professional medical or osteopathic association or society or licensed hospital or medical staff

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(5) ...incompetency...in the performance of the functions or duties of any profession licensed or regulated by this chapter...;

2. Licensee's conduct, as established by the foregoing facts, falls within the
intendment of §334.100.2 (4)(g) and (5) RSMo Supp. 1999.

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JOINT PROPOSED DISCIPLINARY ORDER

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. MD33949, issued to Abaqueta is hereby
PUBLICLY REPRIMANDED.

2. In consideration of the foregoing, the parties consent to the termination of
any further proceedings based upon the facts set forth herein.

LICENSEE

BOARD

GAMALIEL ABAQUETA, M.D. March 29, 2001 Tina Steinman 3-9-01
Date Date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

JAMES O. ERTLE 4-3-01
Date
Assistant Attorney General
Missouri Bar No. 49166

Broadway State Office Building
P.O. Box 899
Jefferson City, MO 65102
(573) 751-4087
(573) 751-5660 Facsimile

Attorneys for Board

EFFECTIVE THIS 9 DAY OF April, 2001.